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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 528

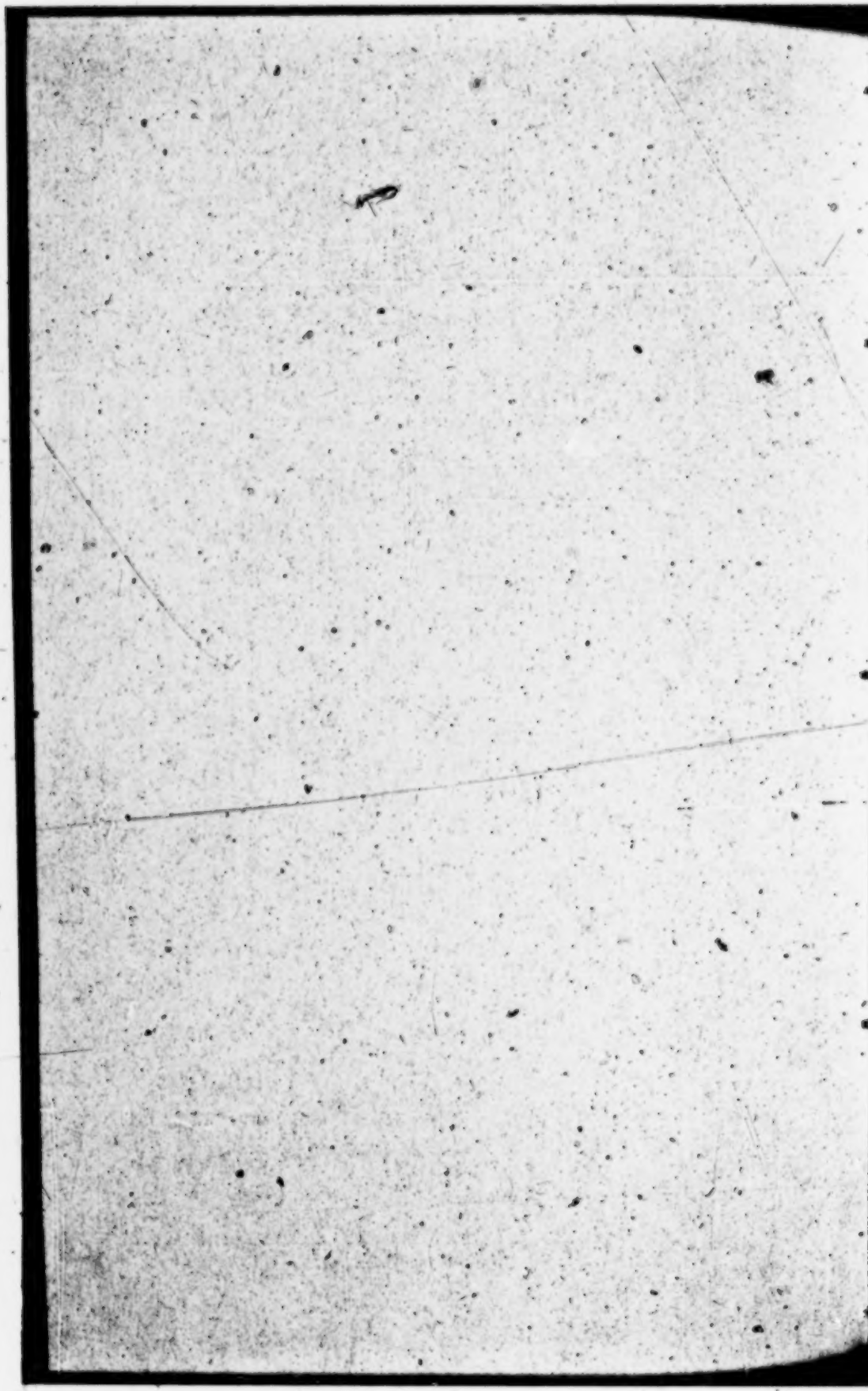
JOSEPH A. BRODERICK, SUPERINTENDENT OF BANKS OF THE STATE OF NEW YORK, APPELLANT,

vs.

MARY ROSNER, ESSIE R. STONE, CAMILLA LOWY, ET AL.

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

FILED NOVEMBER 14, 1934.



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INDEX

	Original	Print
Record from Supreme Court of New Jersey	1	1
Summons	1	1
Complaint	3	3
Schedule 1—Form of demand	15	10
Schedule 2—List of stockholders	16	10
Notice of motion by defendant, The Bobdon Company, to strike out complaint	19	12
Notice of motion by Mary Rosner et al. to strike out complaint	21	13
Opinion, Parker, J.	23	15
Order striking out complaint	33	21
Judgment	36	24
Notice of appeal and grounds of appeal	40	25
Proceedings in Court of Errors and Appeals of New Jersey	47	29
Opinion, per curiam	47	29
Order of affirmance and remittitur	49	29
Order of affirmance of judgment	51	30
Petition for appeal	53	31
Order allowing appeal	55	32
Bond on appeal (omitted in printing)	57	
Assignments of error	69	33
Citations (omitted in printing)	74	
Clerk's certificate (" " ")	79	
Statement of points to be relied upon and designation as to printing record	80	36

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IN SUPREME COURT OF NEW JERSEY, ESSEX COUNTY

SUMMONS—Filed Nov. 17, 1933

THE STATE OF NEW JERSEY.

(L. S.)

To Benjamin Abrams, et als. (totaling 557 in number, this appeal involving the following defendants): Charles P. Anderson, Stephen R. Applegate, Hannah C. Bailey, Mrs. Maude A. Bernert, Samuel Berger, George Bierman, Arthur R. Brick, Herbert Cooper, James Mercer Davis, Nicholas W. D'Elia, Alfred R. M. Diggles, John Drewen, Howard Ewart, Frederick D. Fahrenbruck, Katherine L. Fahrenbruck, M. James Fine, Herman Geismar, Paul S. Gobel, Henry J. Goodman, Benjamin Gorlin, Emanuel Gross, William J. Gruler, Kate Harris, Benjamin Heilbrun, Morris Herman, Charles Kanter, Mrs. Gertrude Kapralik, Richard E. Kohn, Eric Korman, Benjamin Levy, Mrs. Camilla Lowy, A. D. MacDougall, Clair MacFarland, J. Paul Neuwirth, Harry E. O'Mealia, Harry F. O'Mealia, Hamilton G. Pedrick, Mary Rosner, Andrew Schwarz, Raymond C. Staples, Alex Steinberger, Essie R. Stone, Frank W. Sutton, Jr., Howard C. Sylvester, Mrs. Mary A. VanNostrand, Dr. Ralph Waldron, Charles N. Warner, William J. Wells, Zulena Cook Woodward, George W. Bauer & George J. Alles, Arney-Sutton-Gruber Co., The Bobdan Co., The Farg Co., Inc., The Mart, Inc., Northern N. J. Investment Co., Omaco Securities Co., O'Mealia Outdoor Advertising Co., Sutton Brothers Co., Toms River Amusement Co.

[fol. 2] You are summoned to answer the annexed complaint of Joseph A. Broderick, as Superintendent of Banks of the State of New York, in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed com-

plaint, the plaintiff may proceed in the suit, and judgment may be entered against you. (See notice.)

WITNESS, Honorable Thomas J. Brogan, Chief Justice of the New Jersey Supreme Court, at Trenton, this 13th day of November, Nineteen Hundred and Thirty-Three.

Fred L. Bloodgood, Clerk. McDermott, Enright & Carpenter, Attorneys.

[fol. 3] IN SUPREME COURT OF NEW JERSEY, ESSEX COUNTY

Action at law

JOSEPH A. BRODERICK, as Superintendent of Banks of the State of New York, Plaintiff,

against

BENJAMIN ABRAMS et als. (totaling 557 in number, this appeal involving the following defendants) Charles P. Anderson, Stephen R. Applegate, Hannah C. Bailey, Mrs. Maude A. Benkert, Samuel Berger, George Bierman, Arthur R. Brick, Herbert Cooper, James Mercer Davis, Nicholas W. D'Elia, Alfred R. M. Diggles, John Drewen, Howard Ewart, Frederick D. Fahrenbruck, Katherine L. Fahrenbruck, M. James Fine, Herman Geismar, Paul S. Goble, Henry J. Goodman, Bejamin Gorlin, Emanuel Gross, William J. Gruler, Kate Harris, Benjamin Heilbrun, Morris Herman, Charles Kanter, Mrs. Gertrude Kapralik, Richard E. Kohn, Eric Korman, Benjamin Levy, Mrs. Camilla Lowy, A. D. MacDougall, Clair MacFarland, J. Paul Neuwirth, Harry E. O'Mealia, Harry F. O'Mealia, Hamilton G. Pedrick, Mary Rosner, Andrew Schwarz, Raymond C. Staples, Alex Steinberger, Essie [fol. 4] R. Stone, Frank W. Sutton, Jr., Howard C. Sylvester, Mrs. Mary A. VanNostrand, Dr. Ralph Waldron, Charles N. Warner, William J. Wells, Zulena Cook Woodward (Defendants who are joint owners); George W. Bauer & George J. Alles, (Corporate defendants); Arney-Sutton-Gruler Co.; The Bobdan Co.; The Farg Co. Inc.; The Mart, Inc.; Northern N. J. Investment Co.; Omaco Securities Co.; O'Mealia Outdoor Advertising Co.; Sutton Brothers Co.; Toms River Amusement Co., Defendants.

COMPLAINT

Plaintiff, Joseph A. Broderick, as Superintendent of Banks of the State of New York, complaining against the defendants, says that:

First Count:

1. Plaintiff is a resident and citizen of the State of New York, and on and prior to the 11th day of December, 1930, was and now is the duly appointed and acting Superintendent of Banks of the State of New York.

2. The Bank of United States is a moneyed corporation, organized under the Banking Law of the State of New [fol. 5] York, and maintained its office and principal place of business in the Borough of Manhattan, City, County and State of New York.

On December 11, 1930, the capital of The Bank of United States amounted to the sum of $25,250,000, represented by 1,010,000 shares of the par value of $25.00 per share, all of which was at the times herein referred to and now is issued and outstanding. Said stock was owned by 20,843 stockholders residing in nearly every State of the United States, and also residing in Cuba, Greece, Switzerland, France, Monaco, Panama, Roumania, Jugo-Slavia and Italy.

3. On the 11th day of December, 1930, The Bank of United States could not with safety and expediency continue its business, and thereupon on said date, the plaintiff took possession of the business and property of said Bank, and has been and now is in possession and engaged in the liquidation thereof, which action was taken pursuant to Section 57 of an Act of the Legislature of the State of New York entitled "An Act in relation to banking corporations, and individuals, partnerships, unincorporated associations and corporations under the supervision of the banking department, constituting Chapter Two of the Consolidated Laws" (Laws 1914, Chap. 369) which provides as follows:

"The superintendent may forthwith take possession of the business and property of any corporation to which this chapter is applicable, or any personal loan broker, or any private banker to which article four of this chapter is applicable whenever it shall appear that such corporation or banker:

[fol. 6] 1. Has violated its charter or any law;

2. Is conducting its business in an unauthorized or unsafe manner;

3. Is in an unsound or unsafe condition to transact its business;

4. Cannot with safety and expediency continue business;

5. Has an impairment of its capital;

6. Has suspended payment of its obligations;

7. Has neglected or refused to comply with the terms of a duly issued order of the superintendent;

8. Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the banking department;

9. Has refused to be examined upon oath regarding its affairs."

4. Prior to the 6th day of May, 1931, plaintiff determined to liquidate the affairs of The Bank of United States and thereafter pursuant to Section 72 of the said Banking Law of the State of New York and on or about said 6th day of May, 1931, plaintiff notified all creditors in writing, whose names appeared as creditors upon the books of such bank. to present their claims to him and make proper proof thereof on or before the 29th day of June, 1931, at various branch banks of The Bank of United States situate in the City of New York, the names and addresses of which were specified in such notice. Such notice designated June 29th, [fol. 7] 1931, as the last day upon which claims could be presented and proved, and were enclosed in securely sealed envelopes, with postage prepaid, addressed to the creditors appearing on the books of such Bank, and were on or about May 6th, 1931, mailed to such creditors at the General Post Office in the Borough of Manhattan, City of New York. Thereafter such notice was inserted and published weekly, pursuant to the direction of the plaintiff, in thirty-nine newspapers designated by him and published in the City of New York, for more than three consecutive weeks and embracing a period of more than twenty-one days prior to the 29th day of June, 1931, the last day fixed in said notice

for the presentation and making proof of claims as hereinbefore alleged.

5. Subsequent to the 29th day of June, 1931, and prior to July 1st, 1932, plaintiff, after an examination of its affairs, determined and ascertained that the reasonable value of the assets of The Bank of United States was not sufficient to pay its creditors in full, and that there was due and owing by such Bank to its depositors and creditors for moneys received and due and unpaid upon deposit accounts and other moneys owing, for value received, upon its contracts, debts and engagements a sum in excess of $30,000,000 over and above the reasonable value of such assets. Upon information and belief at the time of such determination such insufficiency of assets, as so fixed and ascertained, existed and has since continued.

The creditors of The Bank of United States aggregate over four hundred thousand and are scattered throughout the United States and foreign countries and beyond the [fol. 8] reach of process of the Courts of this State.

6. Article VIII, Section 7 of the Constitution of the State of New York, provides as follows:

"The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind."

7. Section 80 of the said banking law of the State of New York provides as follows:

"Whenever a liability of stockholders for the amount of their respective shares of any such corporation exists, and the superintendent has duly taken possession of the property and business of such corporation, and has duly notified creditors to present and make proof of their respective claims and the last day to present such claims has expired, and he has determined from his examination of its affairs that the reasonable value of the assets of such corporation is not sufficient to pay its creditors in full, he may enforce the individual liability of such stockholders in whole or in part. In case he determines to enforce such liability, he shall make demand in writing upon such stockholders by causing such demand to be enclosed in sealed envelopes

addressed and mailed, postage prepaid, to said respective stockholders at their last known places of address as the same appear upon the stock ledger of such corporation or at their last known address if no address appears in said [fol. 9] ledger. Such demand shall state the total amount assessed by the superintendent against the stockholders and the equal and pro rata share assessed against each stockholder for each share of stock, and the total amount of such assessment for all the shares of stock of such stockholder. Such demand shall also fix a date, not earlier than thirty days from the date of such notice, upon which such stockholder shall be required to pay such assessment to the superintendent. In case any such stockholder shall fail or neglect to pay such assessment within the time fixed in said notice, the superintendent shall have a cause of action, in his own name as superintendent of banks, against such stockholder either severally or jointly with other stockholders of such corporation, for the amount of such unpaid assessment or assessments, together with interest thereon from the date when such assessment was, by the terms of said notice, due and payable. In any such action, the written statement of the superintendent, under his hand and seal of office, reciting his determination to enforce the individual liability, or any part thereof, of such stockholders, and setting forth the value of the assets of such corporation and the liabilities thereof, as determined by him after examination and investigation, shall be presumptive evidence of such facts as therein stated."

8. Subsequent to such determination and prior to the 1st day of July, 1932, plaintiff decided that an assessment of $25.00 against each stockholder for each share of stock held by him was required and necessary to provide moneys [fol. 10] toward the payment and satisfaction of the sums due and owing to the creditors of such Bank.

9. Thereafter and on or about July 1st, 1932, plaintiff made demand in writing upon all the stockholders of The Bank of United States appearing upon its stock ledger for the payment on August 8th, 1932, of $25.00 for each share of stock appearing upon such stock ledger to be held by each stockholder. A form or sample copy of such demand, except as to the name and address of the stockholder and the total amount assessed against him, is hereto annexed,

marked Schedule 1, and made a part hereof. Such demand stated the total amount assessed by the plaintiff against all of the stockholders, the equal and pro rata share assessed against each stockholder for each share of stock held by him, and the total amount of the assessment for all shares held by each such stockholder. Such demands were enclosed in securely sealed postpaid envelopes, addressed to each of such stockholders (including all named as defendants herein) at his, her or its last known place of residence appearing upon the stock ledger of the Bank, and where no address appeared thereon, the last known address of such stockholder. Such demands so sealed and addressed and postage paid thereon were on July 1st, 1932, mailed to each said stockholder at the General Post Office in the Borough of Manhattan, City of New York.

10. Section 120 of said banking law of the State of New York, provides as follows:

"The rights, powers and duties of stockholders of banks shall be as prescribed in the general corporation law and [fol. 11] the stock corporation law; but the individual liability of such stockholders for the contracts, debts, and engagement of the bank and the time within which an action may be instituted to enforce such liability shall be governed exclusively by the provisions of this section and section e-ghty of this chapter.

The stockholders of every bank shall be individually responsible, equally and ratably and not one for another, for all contracts, debts and engagements of the bank, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. An action to enforce such liability must be brought within six years after the cause of action has accrued. The term 'stockholder' as used in this section shall apply to:

1. Such persons as appear by the books of the bank to be stockholders;

2. Every owner of stock, legal or equitable, although the same may be on such books in the name of another person, provided, however, that such term shall not apply to a person holding stock as collateral security for the payment of a debt and not appearing by the books of the bank to be the owner and holder thereof in his own right, or to a per-

son holding stock in a bona fide fiduciary capacity and not appearing by the books of the bank to be the owner and holder thereof in his own right unless such fiduciary shall have invested the funds in his care in violation of law or of the terms under which said funds are held by him, in [fol. 12] which case he shall be personally liable as a stockholder.

No person who has in good faith, and without any intent to evade his liability as a stockholder, caused his stock to be transferred on the books of the bank when such bank is solvent to any resident of this State of full age previous to any default in the payment of any debt or liability of the bank, shall be subject to any personal liability for any contracts, debts or engagements of the Bank.

In case the Superintendent of Banks shall have taken possession of the property and business of the bank pursuant to section fifty-seven of this chapter or a permanent receiver of such bank shall have been appointed, all actions or proceedings to enforce the liability of stockholders under this section shall be taken and prosecuted only in the name of the superintendent or the receiver, as the case may be, unless the superintendent or receiver shall refuse to take such action or proceeding upon proper request in writing made by any creditor, or shall have failed or neglected to commence such action or proceeding within sixty days after the receipt of such request, and in that event such action or proceeding may be taken by any creditor of the bank. But no such action shall be brought by a creditor until a judgment shall have been recovered by him against the bank and an execution thereon shall have been returned unsatisfied in whole or in part."

11. On and prior to December 11, 1930, each of the defendants named in Schedule 2 hereto annexed appeared and now appears upon the stock ledger of The Bank of United [fol. 13] States as the owner and holder of the number of shares set opposite their respective names upon Schedule 2, which is annexed hereto and made a part hereof with the same force and effect as though repeated herein at length.

12. Each of the defendants has failed and neglected to pay the amount of the assessment so levied and imposed.

Plaintiff demands judgment against each of the defendants named in Schedule 2 hereto attached for the amount

so specified opposite his, her or its respective name upon Schedule 2 with interest thereon from August 8, 1932, and costs of suit to be taxed.

Second Count

1. Plaintiff repeats each and every allegation contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the First Count.

2. On and prior to December 11, 1930, each of the defendants referred to in Schedule 3, which is hereto annexed and made a part hereof with the same force and effect as though repeated herein at length, was the equitable owner and holder of the number of shares of stock of The Bank of United States set opposite their respective names in said schedule.

3. The defendant Benjamin Chodosh shown in said schedule on or about September 17, 1930, purchased five shares of said stock from Minnie Chodosh (now Minnie C. Kaplan), but did not have the said shares transferred to his own name on the books of the said Bank.

[fol. 14] 4. The defendant George Eisenberg purchased forty shares of stock of the said Bank from Benjamin Levy of 95 River Street, Hoboken, N. J., prior to December 11, 1930, but did not have said shares of stock transferred to his own name on the books of the said Bank.

5. The defendant Morris Krumholtz purchased fifteen shares of said stock in said Bank June 6, 1930, and had the same placed of record on the books of the Bank in the name of Irving Weinstein as nominee for the said Morris Krumholtz.

6. The defendant Stern Securities Corporation was in truth and in fact the owner of two hundred and sixty-seven shares of stock of the said Bank, which stood on the books of the Bank in the name of Eric Korman as owner, the said Korman being nomine for the said Stern Securities Corporation.

7. Each of the said defendants has failed and neglected to pay the amount of the assessment so levied and imposed, although duly notified thereof and payment demanded.

Plaintiff demands judgment against each of the said defendants set forth in Schedule 3 for the amounts so specified opposite his, her or its names upon said schedule, with interest thereon from August 8, 1932, and costs of suit to be taxed.

McDermott, Enright & Carpenter, Attorneys for Plaintiff, 75 Montgomery Street, Jersey City, N. J.

[fol. 15] SCHEDULE 1 TO COMPLAINT

No.

July 6, 1932.

Please Take Notice: The last day to present claims having expired, I have determined from my examination of the affairs of The Bank of United States that the reasonable value of its assets is not sufficient to pay its creditors in full.

Pursuant to Section 80 of the Banking Law, I have assessed the sum of 25,250,000.00 Dollars against the stockholders of The Bank of the United States, the pro rata share of said asessment against each stockholder on each share of stock being $25.00.

The total assessment against you as holder of ..... shares of stock is $.....

I demand that you pay to me, on the 8th day of August, 1932, at 701 Eighth Avenue, Borough of Manhattan, City of New York, the total assessment made against you.

Joseph A. Broderick, Superintendent of Banks of the State of New York in charge of The Bank of United States in liquidation.

[fol. 16] SCHEDULE 2 TO COMPLAINT

Individuals

Name of stockholder	No. of shares	Amount of assessment
Anderson, Charles P.	180	$4,500.
Applegate, Stephen R.	100	2,500.
Bailey, Hannah C.	2	50.
Benkert, Mrs. Maude A.	75	1,875.
Berger, Samuel	50	1,250.
Bierman, George	67	1,675.
Brick, Arthur R.	10	250.

Name of stockholder	No. of shares		Amount of assessment
Cooper, Herbert	60		1,500.
Davis, James Mercer	25		625.
D'Elia, Nicholas W.	95		2,375.
Diggles, Alfred R. M.	3		75.
Drewen, John	18		450.
Ewart, Howard	50		1,250.
Fahrenbruck, Frederick D.	2		50.
Fahrenbruck, Katherine L.	2		50.
Fine, M. James	10		250.
Geismar, Herman	50		1,250.
Goble, Paul S. (M. D.)	5		125.
Goodman, Henry J.	20		500.
Gorlin, Benjamin	20		500.
Gross, Emanuel	60		1,500.
Gruler, William J.	30		750.
Harris, Kate	19		475.
Heilbrun, Benjamin	10		250.
Herman, Morris	20		500.
[fol. 17] Kanter, Charles	10		250.
Kapralik, Mrs. Gertrude	30	Balance	730.
Kohn, Richard E.	75		1,875.
Korman, Eric	267		6,675.
Levy, Benjamin	40		1,000.
Lowry, Mrs. Camilla	5		125.
MacDougall, A. D.	47		1,175.
MacFarland, Clair	20		500.
Neuwirth, J. Paul	20		500.
O'Mealia, Harry E.	50		1,250.
O'Mealia, Harry F.	10		250.
Pedrick, Hamilton G.	60		1,500.
Rosner, Mary	56		1,400.
Schwarz, Andrew	100		2,500.
Staples, Raymond C.	5		125.
Steinberger, Alex	5		125.
Stone, Essie R.	27		675.

Name of stockholder	No. of shares	Amount of assessment
Sutton, Frank W., Jr.	100	2,500.
Sylvester, Howard C.	80	2,000.
Van Nostrand, Mrs. Mary A.	30	750.
Waldron, Dr. Ralph	150	3,750.
Warner, Charles N.	100	2,500.
Wells, William J.	12	300.
Woodward, Zulena Cook	18	450.
[fol. 18] Joint Owners		
George W. Bauer & George J. Alles	100	2,500.
Corporations		
Arney-Sutton-Gruler Co.	10	250.
The Bobdan Co.	388	9,700.
The Farg Co., Inc.	100	2,500.
The Mart, Inc.	50	1,250.
Northern N. J. Investment Co.	20	500.
Omaco Securities Co.	20	500.
O'Mealia Outdoor Advertising Co.	10	250.
Sutton Brothers Co.	10	250.
Toms River Amusement Co.	50	1,250.

NOTE:—Schedule 2 annexed to the original complaint includes the names, number of shares and amount of assessment of all the 557 defendants. To reduce the record on appeal only the defendants included in this appeal have been set forth in the foregoing schedule.

[fol. 19] IN SUPREME COURT OF NEW JERSEY, ESSEX COUNTY

[Title omitted]

NOTICE OF MOTION BY DEFENDANT, THE BOBDON COMPANY, TO STRIKE OUT COMPLAINT

To McDermott, Enright & Carpenter, Esqs., Attorneys for Plaintiff:

Please Take Notice, that on Saturday, the 9th day of December, 1933, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Essex County

Court House in the City of Newark, County of Essex and State of New Jersey, on behalf of the defendant, The Bobdon Company, we shall apply to the Honorable Charles W. Parker, Supreme Court Justice, to strike the plaintiff's complaint herein on the following grounds:

1. That the complaint does not set forth facts sufficient to constitute a cause of action against the said defendant.

2. That the alleged liability of the said defendant set forth in the complaint filed herein is not enforceable in the courts of this State.

[fol. 20] 3. That the within action cannot be maintained in this Court, in that it is contrary to and violative of the provisions of Section 94 (b) of the Corporation Act (2 Comp. Stats. p. 1656, Sec. 94 (b), which prohiibts the maintenance of an action in a court of law of this State for the enforcement of any statutory personal liability of a stockholder of any foreign corporation.

4. That the complaint does not allege facts sufficient to constitute a cause of action against the defendant under the laws of the State of New York.

Harrison & Roche, Attorneys of Defendant, The Bobdon Company. Chamberlain, Kafer, Wilds & Jube, Esqs., of Counsel, 2 Rector Street, New York, N. Y.

[fol. 21] In Supreme Court of New Jersey, Essex County

[Title omitted]

Notice of Motion by Mary Rosner et al. to Strike Out Complaint

To McDermott, Enright & Carpenter, Esqs., Attorneys of Plaintiff:

Take Notice, that on Saturday, the 9th day of December, 1933, at 9:30 o'clock in the forenoon, at the Essex County Court House, in the City of Newark, in the County of Essex in this state, on behalf of the defendants, Mary Rosner, Essie R. Stone, Camilla Lowy, Ralph Waldron, J. Paul Neuwirth, Richard E. Kohn, George Bierman, Samuel Berger, William J. Wells, M. James Fine and

Kate Harris, we shall apply to the Honorable Charles W. Parker, Supreme Court Justice, to strike out the plaintiff's complaint herein on the following grounds:

1. That the complaint does not set forth any cause of action against the said defendants or any of them.

2. That the alleged liability of the said defendants, set forth in the complaint, is not enforceable in the courts of this state.

[fol. 22] 3. That the laws of this state prohibit the maintenance of this action in this court.

4. That the alleged causes of action set forth in the complaint, as against each of said defendants is, as to each of said defendants several, separate and distinct, and that each of said defendants is misjoined as a defendant in this action with each and all of the other defendants.

5. That the complaint does not set forth any cause of action against said defendants, or any of them, under the laws of the State of New York.

6. That the complaint does not set forth any cause of action which is cognizable in a court of law.

Bilder, Bilder & Kaufman, Attorneys for Above Mentioned Defendants.

Dated, December 4, 1933.

NOTE.—Notices of similar content were served by attorneys for the remaining appellees.

[fol. 23] IN SUPREME COURT OF NEW JERSEY

JOSEPH A. BRODERICK, as Superintendent of Banks of the State of New York, Plaintiff,

vs.

BENJAMIN ABRAMS et als., Defendants

On motions by various defendants, to strike out the complaint as to them respectively.

Before Justice Parker, at Chambers.

For the plaintiff, McDermott, Enright & Carpenter.

(Arthur Ofner, of the New York bar, on the brief.)

For the various moving defendants, Walter J. Bilder: Eichmann & Seiden: Howard Ewart: Gross & Gross: Harrison & Roche: Lichtenstein, Schwartz & Friedenberg.

OPINION—Filed Jan. 30, 1934

PARKER, J.:

One of the grounds originally urged was misjoinder of parties, the facts being that several hundred defendants have been joined in what is nominally one action, but several hundred actions combined for convenience, as [fol. 24] stockholders of the defunct Bank of the United States, and are severally charged with individual liability to the extent of the par value of the shares held by them respectively.

I disposed of this objection in another case a few weeks ago. See Beatty v. Lincoln Bus Co., memorandum filed December 11, 1933. Up to this writing that opinion does not seem to have been reported.

The other principal ground is that by the statute of 1897, (Section 94 b of the Corporation Act as reprinted in Compiled Statutes,) it is enacted that "no action or proceeding shall be maintained in any court of law of this state against any stockholder, * * * of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, * * * for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, * * * if such statutory personal liability be created by or arose from the statutes or laws of any other state or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this state other than in the nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be parties." (C. S. 1656.)

The proposition advanced by the defendants is that this statute, which it is admitted was in existence in New Jersey before the organization of the Bank of the United States, bars any such action as the present one, which is

[fol. 25] by a quasi receiver not appointed by any court but ex officio pursuant to statute, and for the benefit of all the creditors (and principally the depositors) of the defunct Bank of the United States.

One answer made to this by plaintiff is that the case is not within the language of the statute. Another answer made is that if it is within the language of the statute, there is an impairment of the obligation of a contract. A third answer made seems to be that to deny the right of action in this case would be in defiance of the full faith and credit clause of the United States constitution.

An abstract of the complainant is perhaps necessary. It is in two counts but they are both alike, except that the second count merely charges certain "equitable" owners of shares with the alleged responsibility for one hundred per cent assessment; whereas the first count relates to the "legal" owners who are in far greater number.

The averments are that plaintiff is and was on December 11, 1930 the Superintendent of Banks of the State of New York; that the Bank of the United States is a corporation organized under the banking law of that State and doing business in the City of New York; that its capital amounted to $25,000,000, and the stock was owned by nearly 21,000 stockholders all over the United States and in foreign countries; that on December 11, 1930, by virtue of the banking law and in view of the financial condition of the bank, the plaintiff as New York Superintendent of Banks took possession of its business and property and is engaged in liquidating the institution pursuant to Section 57 of the New York banking law of 1914. We need not go into details as to the ground assigned for his action as no question is now raised on that score.

[fol. 26] Paragraphs 4 and 5 of the complaint go on to say that on May 6, 1931, pursuant to Section 72, plaintiff gave notice to the creditors to present their claims, which notices were mailed and advertised and that the time for presentation expired on June 29th, whereupon the plaintiff determined that the assessments were not sufficient to pay the creditors in full and that there was due by the Bank to Depositors and creditors a sum in excess of $30,000,000 over the reasonable value of assets, which deficiency still exists. That amount is in excess of the par value of all the stock.

Paragraph 6 of the complaint quotes the statute of New York which provides that "the stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind."

Paragraph 7 quotes Section 80 of the same Banking law to the effect that whenever a liability as above exists, and the superintendent has taken possession and has notified creditors to present their claims, and the time to present claims has expired, and he has determined from his examination that the reasonable value of the assets is not sufficient to pay in full, he may enforce the individual liability of such stockholders in whole or in part. Then follow a number of provisions about making demand on the stockholders, and what the demand shall contain, and how it shall be made, and what date shall be fixed, and "in case any such stockholder shall fail or neglect to pay such assessment within the time fixed in said notice, the superintendent shall have a cause of action, in his own name as superintendent of banks, against such stockholder either severally or jointly [fol. 27] with other stockholders of such corporation, for the amount of such unpaid assessment or assessments, together with interest thereon from the date when such assessment was, by the terms of said notice, due and payable. In any such action, the written statement of the superintendent, under his hand and seal of office, reciting his determination to enforce the individual liability, or any part thereof, of such stockholders, and setting forth the value of the assets of such corporation and the liabilities thereof, as determined by him after examination and investigation, shall be presumptive evidence of such facts as therein stated."

The complaint further states that plaintiff decided that an assessment of $25 a share was required and necessary; and that on or about July 1st, 1932, he made demand on the various stockholders for the payment of $25 for each share of stock appearing upon the ledger to be held by such stockholder. Said demand stated that total amount assessed by plaintiff against all of the stockholders, the equal and pro rata share assessed against each stockholder for each share of stock held by him, and the total amount of the assessment for all shares held by each stockholder.

It then quotes Section 120 of the banking law which, so far as relevant, is to the effect that the individual liability of stockholders is to be governed exclusively by Sections 120 and 80, and that the stockholders shall be individually responsible to the extent of their stock at par in addition to the amount invested by them, and that an action to enforce such liability must be brought within six years after the cause of action has accrued. The section then undertakes to define and describe who the stockholders are (we need not consider that now) and then provides as follows:

[fol. 28] "In case the Superintendent of Banks shall have taken possession of the property and business of the bank pursuant to section fifty-seven of this chapter or a permanent receiver of such bank shall have been appointed, all actions or proceedings to enforce the liability of stockholders under this section shall be taken and prosecuted only in the name of the superintendent of the receiver, as the case may be, unless the superintendent or receiver shall refuse to take such action or proceeding upon proper request in writing made by any creditor, or shall have failed or neglected to commence such action or proceeding within sixty days after the receipt of such request, and in that event such action or proceeding may be taken by any creditor of the bank. But no such action shall be brought by a creditor until a judgment shall have been recovered by him against the bank and an execution thereon shall have been returned unsatisfied in whole or in part."

The final averment in the complaint is that each of the defendants named in Schedule 2 annexed to the complaint appearing as stockholders on the books of the bank to the number of shares set opposite his name, has neglected and failed to pay the assessment so imposed.

The briefs submitted in this matter are very voluminous and have come from a number of different counsel, but I think they do not make any substantial points beyond those that have been mentioned above. The case is one of great importance, and I should like to devote much more time to it than is practicable in view of the pressure of other work; but, so far as I can see, the decision of these points seems reasonably plain.

[fol. 29] It is to be observed that the present action is not one for the collection of unpaid subscriptions to stock,

but for the collection of an assessment up to the original par value of the stock. Consequently it differs from the recent case of Graham v. Fleissner, 107 N. J. Law, 278 in which Section 94 b was considered and held inapplicable to a case in which the defendant stockholder had secured his stock as an original issue at some fraction of its par value and was held liable for the difference. It was objected in that case that Section 94 b was applicable, but the Court of Errors and Appeals expressly held (p. 280) that the phrase "statutory personal liability" in the statute "means personal liability imposed by statute extra the common law liability to make up a deficit of par value, i. e., the so-called 'trust fund' theory of capital stock," and the Court held that even in the case of "trust fund" liability our courts would not cast up the assets and liabilities of a foreign corporation, but that that must be done at the domicile of said corporation or, as in the particular case, in bankruptcy.

As has been said, the present case is fundamentally different in that the attempt is to enforce by a suit at law against each individual stockholder a statutory personal liability of one hundred per cent of his claim after an ascertainment of assets, not by any court of law or equity, but by a State official not endowed with any judicial power so far as appears. That official comes over into this State and endeavors by a suit at law (or rather several hundred suits at law) to recover the several amounts that he has himself assessed against the shareholders respectively. This seems to me to fly directly in the face of our statute. As Banking Commissioner who has taken possession and is administer-[fol. 30] ing the affairs of the defunct corporation as a quasi receiver, the plaintiff is avowedly acting in the interest of the creditors and for no other purpose. He is attempting to recover from the stockholders severally, in several hundred separate suits combined merely for convenience, the amount of their statutory liability up to the statutory limit, for the purpose of paying those creditors. Whether it is one creditor or two or three or a dozen or several thousand appears to me to make no difference in the situation. This suit is not one suit, but a multiple suit, at law, clearly on behalf of creditors of a corporation, and that a foreign one, to enforce in each case a stautory personal liability of a stockholder. This exactly what the statute forbids.

Secondly, that to refuse to entertain this action would be to impair the obligation of a contract.

What I understand to be the contract claimed to exist in this case is the contract between the State of New York and its own corporation and between that corporation and its stockholders which, of course, is dependent upon the New York statute. It seems to be a sufficient answer to say, as has already been said, that our statute was in force long before the Bank of the United States was organized and so far as relates to any rights attempted to be conferred by the New York statute in permitting recovery in other States, this State is in on way bound thereby and perhaps would not be bound even although the incorporation of this bank antedated our statute. However, it is unnecessary to go so far as this. I think the point regarding impairment of contract is without substance.

Finally, that to deny the right of this Commissioner to sue at law in this State, as he is suing, is in defiance of the full faith and credit clause of the constitution.

[fol. 31] Here again I think the point is without substance. It is true that it has been held in one or more cases in the Supreme Court of the United States, as for example in Converse v. Hamilton, 224 U. S. 243, that where an assessment of this kind has been definitely adjudicated by the courts of the home State and turned in effect into a judgment against the various parties concerned, that adjudication is enforcible in a sister State by virtue of the federal constitution although the laws of the latter state may be to the contrary. But here we have no court adjudication of any kind. The Commissioner, pursuant to a statute, has taken charge and has determined as a Commissioner that the United States Bank is insolvent and that the stockholders ought to be assessed to make up the deficit. That no doubt he can enforce in New York State under the statute of that State. But when he comes over here he is met by the express prohibition of our statute against any suit at law and by the requirement that the suit shall be in the nature of an equitable accounting, to which all stockholders shall be parties. In the proceeding before me the suits are several, and only one defendant is a party in each, in theory of law.

As a matter of comity it is well known that State courts often lend their aid to the enforcement of rights which arise in other States; and in many cases they are bound to do so. But in a matter of this kind it was expressly laid down

by the Supreme Court of the United States in Finney v. Guy, 189 U. S. 335, that "whether a state court should permit an action to be maintained therein on the principle of comity between the states is a question exclusively for the courts of that state to decide," to which it may here be added that the legislature in the present instance under-[fol. 32] took to decide that question itself.

My conclusion is that the present complaint cannot be supported and must be struck out as stating causes of action which by statute are not maintainable at law in this State. Whether a judgment for the defendant should be directed thereon is a matter on which counsel are probably entitled to be heard.

As I view the matter now, it would seem that there should be a judgment for the moving defendants subject of course to appeal, and without prejudice to the filing of a bill in equity on the lines laid down in section 94-b of the Corporation Act. The matter might be transferred to the Court of Chancery, but the complaint would have to be reframed, I think in any event.

I will hear counsel on the first convenient motion day as to settlement of these details.

[fol. 33] In Supreme Court of New Jersey, Essex County

[Title omitted]

Order Striking Out Complaint

Application having been made by the defendants hereinafter named on due notice to plaintiff for an order striking out plaintiff's complaint herein on the grounds, among others, that the laws of this state prohibit the maintenance of this action in this court and that the complaint does not set forth any cause of action which is cognizable in a court of law of this state, and counsel for the respective parties having presented oral argument and filed briefs, and this court having considered same, and good and sufficient reason appearing therefor, and it appearing that all of the above mentioned attorneys for the above said defendants have consented to the form of this order; it is, on this tenth day of February, A. D. 1934, on motion of Bilder, Bilder & Kaufman, attorneys of defendants Mary Rosner, Essie R. Stone, Camilla Lowy, Ralph Waldron, J. Paul Neuwirth,

Richard E. Kohn, George Bierman, Samuel Berger, William J. Wells, M. James Fine, and Kate Harris; and Otto Cooper, attorney of defendant Morris Hermann; and Abe J. David, attorney of defendant Howard C. Sylvester; and [fol. 34] James Mercer Davis, attorney of defendants James Mercer Davis, Hamilton G. Pedrick and Clair MacFarland; and Eichmann & Seiden, attorneys for defendants Benjamin Gorlin, Charles Kanter, Henry J. Goodman, Benjamin Levy, Northern New Jersey Investment Co., a corp., Alex Steinberger, A. D. MacDougall and Gertrude Kapralik, and Howard Ewart, attorney of defendants Raymond C. Staples, William J. Gruler, Mrs. Maudé A. Benkart, Zulena Cook Woodward, Hannah C. Bailey, Charles N. Warner, Alfred R. M. Diggles, Charles P. Anderson, Andrew Schwarz, Frank W. Sutton, Jr., Toms River Amusement Co., Arney-Sutton-Gruler Co., Sutton Brothers Co., Stephen R. Applegate, Paul S. Goble, Howard Ewart, Mrs. Mary A. Van Nostrand; and Gross & Gross, attorneys for defendant Emanuel Gross; and Norman W. Harker, attorney for defendants Frederick D. Fahrenbruck and Katherine L. Fahrenbruck; and Harrison & Roche, attorneys for defendant The Bobdan Co.; and Sylvan Heilbrun, attorney for defendant Benjamin Heilbrun; and Lichtenstein, Schwartz & Friedenberg, attorneys for defendants The Farg Co. Inc., and Herman Geismar; and Aloysius McMahon, attorney for defendants Harry F. O'Mealia, Harry E. O'Mealia, O'Mealia Outdoor Advertising Co. and Omaco Securities Company; and Perkins, Drewen and Nugent, attorneys for defendants Nicholas W. D'Elia, Eric Korman and John Drewen; and Scammel, Knight & Reese, attorneys for defendant Arthur R. Brick; and Ben S. Shipman, attorney for defendant The Mart Inc.; Aquila N. Venino, attorney for Herbert Cooper, and Whittemore & McLean, attorneys for defendants George J. Alles and George W. Bauer,

[fol. 35] Ordered, that plaintiff's complaint be and the same hereby is struck out as to the above named defendants, and it appearing that no application is made by plaintiff to amend said complaint, it is further

Ordered, that judgment final be entered in favor of each of said defendants and against said plaintiff, with costs to be taxed under the direction of this Court.

Let this rule be entered.

Charles W. Parker, Supreme Court Justice.

[fol. 36] In Supreme Court of New Jersey

Action at Law

Joseph A. Broderick, as Superintendent of Banks of the State of New York, Plaintiff,

vs.

Benjamin Abrams, et als., Defendants

Judgment Final for Defendants on striking out Complaint.

Bilder, Bilder & Kaufman, attys. for defts. Mary Rosner, Essie R. Stone, Camilla Lowy, Ralph Waldron, J. Paul Neuwirth, Richard E. Kohn, George Bierman, Samuel Berger, William J. Wells, M. James Fine & Kate Harris.

Otto Cooper, Atty. for deft. Morris Hermann.

Abe J. David, Atty. for deft. Howard C. Sylvester.

James Mercer Davis, Atty. for defts. James Mercer Davis, Hamilton G. Pedrick and Clair MacFarland.

Eichmann & Seiden, Attys. for defts. Benjamin Gorlin, Charles Kanter, Henry J. Goodman, Benjamin Levy, Northern New Jersey Investment Co., a corp., Alex Steinberger, A. D. MacDougall and Gertrude Kapralik.

[fol. 37] Howard Ewart, Atty. of defts. Raymond C. Stables, William J. Gruler, Mrs. Maude A. Benkart (or Benkert), Zulena Cook Woodward, Hannah C. Bailey, Charles N. Warner, Alfred R. M. Diggles, Charles P. Anderson, Andrew Schwarz, Frank W. Sutton, Jr., Toms River Amusement Co., Arney-Sutton-Gruler Co., Sutton Brothers Co., Stephen R. Applegate, Paul S. Goble, Howard Ewart, Mrs. Mary A. Van Nostrand.

Gross & Gross, Attys. for deft. Emanuel Gross.

Norman W. Harker, Atty. for defts. Frederick D. Fahrenbruck & Katherine L. Fahrenbruck.

Harrison & Roche, Attys. for deft. The Bobdan Co.

Sylvan Heilbrun, Atty. for deft. Benjamin Heilbrun.

Lichtenstein, Schwartz & Friedenberg, Attys. for defts. The Farg Co., Inc. & Herman Geismar.

Aloysius McMahon, Atty. for defts. Harry F. O'Mealia, Harry E. O'Mealia, O'Mealia Outdoor Advertising Co. & Omaco Securities Company.

Perkins, Drewen & Nugent, Attys. for defts. Nicholas W. D'Elia, Eric Korman and John Drewen.

[fol. 38] Scammell, Knight & Reese, Attys. for deft. Arthur R. Brick.

Ben S. Shipman, Atty. for deft. The Mart, Inc.

Aquila N. Venino, Atty. for deft. Herbert Cooper.

Whittemore & McLean, Attys. for defts. George J. Alles and George W. Bauer.

JUDGMENT

Judgment entered this fourteenth day of February, A. D. nineteen hundred and thirty-four against the plaintiff and in favor of defendants Mary Rosner, Essie R. Stone, Camilla Lowy, Ralph Waldron, J. Paul Neuwirth, Richard E. Kohn, George Bierman, Samuel Berger, William J. Wells, M. James Fine, Kate Harris, Morris Hermann, Howard C. Sylvester, James Mercer Davis, Hamilton G. Pedrick, Clair MacFarland, Benjamin Gorlin, Charles Kanter, Henry J. Goodman, Benjamin Levy, Northern New Jersey Investment Co., a corp., Alex Steinberger, A. D. MacDougall, Gertrude Kapralik, Raymond C. Staples, William J. Gruler, Mrs. Maude A. Benkart (or Benkert) Zulena Cook Woodward, Hannah C. Bailey, Charles N. Warner, Alfred R. M. Diggles, Charles P. Anderson, Andrew Schwarz, Frank W. Sutton, Jr., Toms River Amusement Co., Arney-Sutton-Gruler Co., Sutton Brothers Co., Stephen R. Applegate, Paul S. Globe, Howard Ewart, Mrs. Mary A. Van Nostrand, Emanuel Gross, Frederick D. Fahrenbruck, Katherine L. Fahrenbruck, The Bobdan Co., Benjamin Heilbrun, The Farg Co., Inc., Herman Geismar, Harry F. O'Mealia, Harry E. O'Mealia, O'Mealia Out-

[fol. 39] door Advertising Co., Omaco Securities Company, Nicholas W. D'Elia, Eric Korman, John Drewen, Arthur R. Bricks, The Mart, Inc., Herbert Cooper, George J. Alles and George W. Bauer for the sum of —— costs.

Thomas J. Brogan, Chief Justice.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 40] In Supreme Court of New Jersey, Essex County

[Title omitted]

Notice of Appeal and Grounds of Appeal—Filed March 31, 1934

To: Messrs. Bilder, Bilder & Kaufman, attorneys for defendants Mary Rosner, Esssie R. Stone, Camilla Lowy, Ralph Waldron, J. Paul Neuwirth, Richard E. Kohn, George Bierman, Samuel Berger, William J. Wells, M. James Fine, and Kate Harris;

Otto Cooper, Esquire, attorney for defendant Morris Herman;

Abe J. David, Esquire, attorney for defendant Howard C. Sylvester;

James Mercer Davis, Esquire, attorney for defendants James Mercer Davis, Hamilton G. Pedrick, and Clair MacFarland;

Messrs. Eiclmann & Seiden, attorneys for defendants Benjamin Gorlin, Charles Kanter, Henry J. Goodman, Benjamin Levy, Northern New Jersey Investment Co., Alex Steinberger, A. D. MacDougall, and Gertrude Kapralik;

[fol. 41] Howard Ewart, Esquire, attorney for defendants Raymond C. Staples, William J. Gruler, Mrs. Maude A. Benkart, Zulena Cook Woodward, Hannah C. Bailey, Charles N. Warner Alfred R. M. Diggles, Charles P. Anderson, Andrew Schwarz, Frank W. Sutton, Jr., Toms River Amusement Co., Arney-Sutton-Gruler Co., Sutton Brothers Co., Stephen R. Applegate, Paul S. Goble, Howard Ewart, Mrs. Mary A. Van Nostrand;

Messrs. Gross & Gross, attorneys for defendant Emanuel Gross;

Norman W. Harker, Esquire, attorney for defendants Frederick D. Fahrenbruck, and Katherine L. Fahrenbruck;

Messrs. Harrison & Roche, attorneys for defendant The Bobdan Co.;

Sylvan Heilbrun, Esquire, attorney for defendant Benjamin Heilbrun;

Messrs. Lichtenstein, Schwartz & Friedenberg, attorneys for defendants The Farg Co., Inc., and Herman Geismar;

Aloysius McMahon, Esquire, attorney for defendants Harry F. O'Mealia, Harry E. O'Mealia, O'Melia Outdoor Advertising Co. and Omaco Securities Company;

Messrs. Perkins, Drewen and Nugent, attorneys for defendants Nicholas W. D'Elia, Eric Korman and John Drewen;

[fol. 42] Messrs. Scammell, Knight & Reese, attorneys for defendant Arthur R. Brick; Ben S. Shipman, Esquire, attorney for defendant The Mart, Inc.;

Aquila N. Venino, Esquire, attorney for defendant Herbert Cooper;

Messrs. Whittemore & McLean, attorneys for defendants George J. Alles and George W. Bauer.

Sirs:

Take notice that the plaintiff hereby appeals to the New Jersey Court of Errors and Appeals from the whole and every part of the order made in the above entitled action dated February 10, 1934, striking out plaintiff's complaint as to the defendants Mary Rosner, Essie R. Stone, Camilla Lowy, Ralph Waldron, J. Paul Neuwirth, Richard E. Kohn, George Bierman, Samuel Berger, William J. Wells, M. James Fine, Kate Harris, Morris Herman, Howard C. Sylvester, James Mercer Davis, Hamilton G. Pedrick, Clair MacFarland, Benjamin Gorlin, Charles Kanter, Henry J. Goodman, Benjamin Levy, Northern New Jersey Investment Co., Alex Steinberger, A. D. MacDougall, Gertrude Kapralik, Raymond C. Staples, William J. Gruler, Mrs. Maude A. Benkart (or Benkert), Zulena Cook Woodward, Hannah C. Bailey, Charles N. Warner, Alfred R. M. Diggles, Charles P. Anderson, Andrew Schwarz, Frank W. Sutton, Jr., Toms River Amusement Co., Arney-Sutton-Gruler Co., Sutton Brothers Co., Stephen R. Applegate, Paul S. Goble, Howard Ewart, Mrs. [fol. 43] Mary A. Van Nostrand, Emanuel Gross, Frederick D. Fahrenbruck, Katherine L. Fahrenbruck, The Bobdan Co., Benjamin Heilbrun, The Farg Co., Inc., Herman Geismar, Harry F. O'Mealia, Harry E. O'Mealia, O'Mealia Outdoor Advertising Co., Omaco Securities Company, Nicholas W. D'Elia, Eric Korman, John Drewen, Arthur R. Brick, The Mart, Inc., Herbert Cooper, George J. Alles and George W. Bauer, as well as from the whole and every part of the final judgments entered thereon in the above entitled action on the 8th day of March, 1934, in favor of each of the several defendants last aforesaid.

The following are plaintiff's grounds of appeal:

1. Said order and judgments are based upon an erroneous finding by the Court that the laws of this State prohibit the maintenance in this Court of the action set forth in the complaint.

2. Said order and judgments are based upon the erroneous finding that the complaint does not set forth any cause of action which is cognizable in a court of law of this State.

3. Said order and judgments are based upon an erroneous finding by the Court that the action set forth in the complaint is an action brought by or on behalf of a creditor of a foreign corporation against a stockholder thereof, to enforce a statutory personal liability of such stockholder for or upon a debt, default or obligation of such corporation arising from the statutes or laws of another State of the United States, within the intent and meaning of Section 94-B of the Corporation Act of the State of New Jersey.

[fol. 44] 4. Said order and judgments do not give full faith and credit to the public acts, records and judicial proceedings of the State of New York within the intent and meaning of Article IV, Section 1, of the Constitution of the United States, in that the complaint in above action sets forth as the basis of relief a public act and a judicial proceeding of the State of New York within the intent and meaning of the Constitution of the United States. Said statute of the State of New Jersey, if construed as prohibitive of said action, is void under the Constitution of the United States.

5. Said order and judgments, in effect, deny a remedy in the courts of this State upon a valid contract entered into within the jurisdiction and pursuant to the laws of a sister State, and thereby abridge the privileges and immunities of citizens of the United States and deny to the plaintiff the equal protection of the laws in violation of the Constitution of the United States and particularly the Fourteenth Amendment thereof.

6. Said statute of the State of New Jersey, as construed and applied by said order and judgments, is in violation of the Constitution of the United States and particularly the

Fourteenth Amendment thereof, and therefore null and void.

7. Said statute, as construed and applied by said order and judgments, in that it closes the courts of this State to plaintiff in enforcement of lawful contract rights except under impossible conditions, deprives plaintiff of its property in said contracts without due process of law, in [fol. 45] violation of the Constitution of the United States and particularly Article V and the Fourteenth Amendment thereof. Said statute is void and said order and judgments based thereon erroneous.

8. The complaint sets forth a cause of action depending upon defendants' contracts as stockholders of The Bank of United States, to pay assessments as and when determined pursuant to the laws of the State of New York, and such contractual obligations are not within the prohibition of said statute of New Jersey relied on by the Court in making said order and judgments.

9. Said order and judgments, in that they deny to the plaintiff a remedy upon lawful causes of action accruing to him under the laws of a sister State, as representative of a corporation of said State, deny to the plaintiff and to said corporation the privileges and immunities of a citizen of the State of New York secured by Article IV, Section 2 of the Constitution of the United States, and said order and judgments are, therefore, erroneous.

10. Said order and judgments, in that they are general judgments against the plaintiff and in favor of the named defendants, and, therefore, a bar to any other action in any other court of this or any other State, are erroneous, since the statute relied upon does not purport to go further than a prohibition against an action at law in the courts of this State, and does not justify a judgment concluding the plaintiff upon the merits of the cause of action.

11. Said order and judgments in favor of the aforesaid defendants and against the plaintiff are erroneous in that [fol. 46] plaintiff's complaint sets forth a valid cause of action upon which plaintiff was entitled to judgment against said defendants or to a trial in support of the allegations thereof.

12. Said order and judgments are in various other respects erroneous, illegal and void.

McDermott, Enright & Carpenter, Attorneys for Plaintiff-Appellant.

[fols. 47 & 48] In Court of Errors and Appeals of New Jersey, May Term, 1934

No. 122

Joseph A. Broderick, as Superintendent of Banks of the State of New York, Appellant,

vs.

Benjamin Abrams et als., Respondents

Appeal from Supreme Court.

Opinion—Filed Sept. 27, 1934

Per Curiam:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Parker in the Supreme Court, reported in 112 N. J. L. 309.

[File endorsement omitted.]

[fols. 49 & 50] In Court of Errors and Appeals of New Jersey

Joseph A. Broderick, Superintendent of Banks of New York, Plaintiff-Appellant,

vs.

Benjamin Abrams et als., Defendants, Appellees

On appeal from the Supreme Court.

Order of Affirmance and Remittitur—Filed Oct. 4, 1934

This cause having been duly argued at the May Term, 1934, of this Court by McDermott, Enright and Carpenter,

of Counsel with Appellant, and by Howard Ewart, of Counsel with the Appellees Raymond C. Staples, William J. Gruler, Mrs. Maude A. Benkart, Zulena Cook Woodward, Hannah C. Bailey, Charles N. Warner, Alfred R. M. Diggles, Charles P. Anderson, Andrew Schwarz, Frank W. Sutton, Jr., Toms River Amusement Co., Arney-Sutton-Gruler Co., Sutton Brothers Co., Stephen R. Applegate, Paul S. Goble, Mrs. Mary A. Van Nostrand, Howard Ewart, Hamilton G. Pedrick, Clair MacFarland, and James Mercer Davis, and the Court having considered the same and finding no error in the record or proceedings in the Supreme Court;

It is thereupon, on this 27th day of September, in the year of our Lord, One Thousand Nine Hundred and Thirty-four, Ordered and Adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed as to the Defendants named in the body of this Order, with costs; and that the record be remitted to the Supreme Court, to be proceeded with in accordance with this judgment and the practice of said Court. On Motion Of:

Howard Ewart, Attorney for Appellees Above-named.

[File endorsement omitted.]

[fols. 51 & 52] In Court of Errors and Appeals of New Jersey, May Term, 1934

Between Joseph A. Broderick, as Superintendent of Banks of the State of New York, Plaintiff-Appellant,

and

Benjamin Abrams et als., Defendants-Appellees

On appeal from Supreme Court.

Order of Affirmance of Judgment—Filed Oct. 10, 1934

This cause having been duly argued at the May term, 1934 of this court by James D. Carpenter, Jr. of counsel for the appellant and Walter J. Bilder of counsel for the respondents Mary Rosner, Essie R. Stone, Camilla Lowy,

Ralph Waldron, J. Paul Neuwirth, Richard E. Kohn, George Bierman, Samuel Berger, William J. Wells, M. James Fine and Kate Harris, and the Court having considered the same, and finding no error in the record or proceedings in the Supreme Court,

It is thereupon, on this 27th day of September, in the year of our Lord one thousand nine hundred and thirty-four Ordered and Adjudged that the judgment of the Supreme Court, removed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of

Bilder, Bilder & Kaufman, Attorneys for Respondents, Mary Rosner, Essie R. Stone, Camilla Lowy, Ralph Waldron, J. Paul Neuwirth, Richard E. Kohn, George Bierman, Samuel Berger, William J. Wells, M. James Fine and Kate Harris.

A true copy: Thomas A. Mathis, Clerk.

[File endorsement omitted.]

[fols. 53 & 54] In Court of Errors and Appeals of New Jersey

[Title omitted]

Petition for Allowance of Appeal from the New Jersey Court of Errors and Appeals to the Supreme Court of the United States—Filed Oct. 22, 1934

To Honorable Luther A. Campbell, Chancellor and Presiding Judge of the New Jersey Court of Errors and Appeals:

The above named plaintiff-appellant, Joseph A. Broderick, Superintendent of Banks of the State of New York, feeling himself aggrieved by the judgment and order of the New Jersey Court of Errors and Appeals entered on the fourth day of October, Nineteen Hundred and Thirty-Four, in the above entitled cause, affirming the order of the New Jersey Supreme Court dated February 10, 1934, striking out plaintiff's complaint, and the judgment of said

New Jersey Supreme Court entered thereon in favor of the defendants and against the plaintiff February 14, 1934, hereby prays your Honor to allow an appeal from said judgment of the New Jersey Court of Errors and Appeals, being the Court of Last Resort in the State of New Jersey, to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers on which said judgment was made and entered, duly authenticated, may be ordered to be sent to the said Supreme Court of the United States.

Dated: Jersey City, N. J., October 19, 1934.

James D. Carpenter, Jr., Attorney for Plaintiff-Appellant.

[File endorsement omitted.]

[fols. 55-68] In Court of Errors and Appeals of New Jersey

[Title omitted]

Order Allowing Appeal to Supreme Court of the United States—Filed Oct. 22, 1934

The above named plaintiff-appellant having petitioned the undersigned presiding Judge of the New Jersey Court of Errors and Appeals for an order allowing the plaintiff-appellant to appeal to the Supreme Court of the United States from the judgment of the New Jersey Court of Errors and Appeals, the Court of Last Resort of the State of New Jersey, dated October 4, 1934, and a bond, assignment of errors, citation, and statement of jurisdiction having been presented:

It is ordered that said appeal be and the same is hereby allowed, and appellant's bond in the sum of $3,000.00, with United States Fidelity & Guaranty Company, surety thereon, is hereby approved as to form and sufficiency. Dated: October 22, 1934.

Luther A. Campbell, Chancellor and Presiding Judge of the New Jersey Court of Errors and Appeals.

[File endorsement omitted.]

[fol. 69] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Oct. 22, 1934

Now comes the above named plaintiff-appellant by James D. Carpenter, Jr., his counsel, and says that in the record and proceedings in the above entitled cause there is manifest error in this, to wit:

(1) Because said judgment is based upon a finding that Chapter 50, P. L. 1897, page 124, Section 2, of the State of New Jersey, entitled "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)," is a bar to the maintenance of this action in the courts of law of the State of New Jersey, whereas said statute is null and void in that it is repugnant to Article IV, Section 1, of the Constitution of the United States, providing:

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

(2) Because said judgment is based upon a finding that Chapter 50 of the Laws of 1897, page 124, Section 2, of the State of New Jersey, entitled "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)," is a bar to the maintenance of this action in the courts of law of the State of New Jersey, whereas said [fol. 70] statute is null and void in that it is repugnant to Article IV, Section 2, Paragraph 1, of the Constitution of the United States, and the Fourteenth Amendment, which provides:

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

(3) An act of the Legislature of the State of New Jersey entitled, "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)," as construed and applied by the New Jersey Supreme Court and Court of Errors and Appeals, closes the courts of New Jersey to plaintiff in enforcement of lawful contract rights as stated in the complaint, except under conditions so burdensome as to be impossible, and so expensive as to deprive plaintiff of his property in said contracts without due process of

law, in violation of the Fourteenth Amendment of the Constitution of the United States. Said statute is void and the judgment based thereon is erroneous.

(4) An act of the Legislature of the State of New Jersey entitled, "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)," as construed and applied by the New Jersey Supreme Court and Court of Errors and Appeals, closes the courts of New Jersey to plaintiff in the enforcement of lawful contract rights as stated in the complaint and as provided by Article VIII, Section 7 of the Constitution of the State of New York, and Sections 120 and 80 of the New York Banking Law, in violation of Article IV, Section 1 of the Constitution of the United States.

(5) An act of the Legislature of the State of New Jersey entitled, "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)," as construed and applied by the New Jersey Supreme Court and Court of [fol. 71] Errors and Appeals, closes the courts of New Jersey to plaintiff in the enforcement of lawful contract rights as stated in the complaint and as provided by Article VIII, Section 7 of the Constitution of the State of New York, and Sections 120 and 80 of the New York Banking Law, except under conditions so burdensome as to be impossible and so expensive as to deprive the aforementioned constitutional and statutory provisions of the State of New York of full faith and credit as required by Article IV, Section 1 of the Constitution of the United States.

(6) The judgment of the New Jersey Court of Errors and Appeals is null and void in that it is a general judgment against the plaintiff and in favor of the named defendants, and therefore a bar to any other action in any other court of New Jersey, or any other State, and is erroneous since the statute of New Jersey above expressly referred to does not purport to go further than a prohibition against an action at law in the courts of New Jersey, and does not justify a judgment concluding the appellant upon the merits of the cause of action.

(7) The judgment of the New Jersey Court of Errors and Appeals is erroneous in that it did not give full faith and credit to the public acts, record and judicial proceedings of the State of New York, within the intent and mean-

ing of Article IV, Section 2, Paragraph 1, of the Constitution of the United States, in that the complaint in above entitled action sets forth as the basis of relief a public act and a judicial proceeding of the State of New York within the intent and meaning of the Constitution of the United States. Said statute of the State of New Jersey, being construed as prohibitive of said action, is void as repugnant to the section of the Constitution of the United States above [fol. 72] referred to.

(8) Said statute of the State of New Jersey as construed and applied by the order and judgment of the Supreme Court, and the judgment of the Court of Errors and Appeals, is in violation of the Constitution of the United States, and particularly the Fourteenth Amendment thereof, and is therefore null and void.

(9) Said statute of the State of New Jersey, which would deny to the appellant any relief in the cause of action stated in the complaint, other than in the nature of an equitable accounting for the proportionate benefit of all parties interested, to which The Bank of United States and its legal representatives, and all of its creditors (aggregating over four hundred thousand in number), and all of its stockholders (aggregating over twenty thousand), shall be necessary parties, is so unreasonable and so burdensome as to be impossible of performance, by reason whereof said statute deprives appellant of his property as Superintendent of Banks of the State of New York in assessments duly levied by him against stockholders of The Bank of United States resident in New Jersey, without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

Wherefore the said Joseph A. Broderick, as Superintendent of Banks of the State of New York, prays that the judgment of the New Jersey Court of Errors and Appeals may be in all things reversed.

James D. Carpenter, Jr., Counsel for Appellant.

[fols. 73-78] [File endorsement omitted]

[fol. 79] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 80] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Nov. 19, 1934

Now comes the above named appellant in the above entitled cause by James D. Carpenter, Jr., his counsel, and states that the points upon which he intends to rely in this Court in this cause, are as follows:

Point 1. That the New Jersey Court of Errors and Appeals erred in holding that an act of the legislature of the State of New Jersey known as Chapter 50 P. L. 1897, p. 124, Section 2, entitled "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)", is a bar to the maintenance of this action, whereas said Statute is null and void in that it is repugnant to Article IV, Section 1, of the Constitution of the United States, which provides:

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

Point 2. Because the New Jersey Court of Errors and Appeals erred in holding that Chapter 50 P. L. 1897, p. 124, Section 2, of the State of New Jersey, entitled "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)", is a bar to the maintenance of this action in the Courts of Law of the State of New Jersey, whereas said Statute is null and void in that it is repugnant to Article IV, Section 2, paragraph 1, of the Constitution of [fol. 81] the United States and the Fourteenth Amendment thereof, in that said Statute abridges the privileges and immunities of citizens of the United States.

Point 3. The act of the Legislature of the State of New Jersey, entitled "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)," P. L. 1897, Chapter 50, p. 124, Section 2, as construed and applied by the New Jersey Supreme Court and New Jersey Court of Errors and Appeals, closes the courts of New Jersey to the plaintiff in enforcement of lawful contract rights, as stated in the complaint, except under conditions so burdensome as to be impossible, and so expensive as to deprive plaintiff of his property in said contracts without due process of

law, in violation of the Fourteenth Amendment of the Constitution of the United States. Said Statute is void and the judgment based thereon is erroneous.

Point 4. An act of the Legislature of the State of New Jersey entitled, "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)," P. L. 1897, Chapter 50, p. 124, Section 2, as construed and applied by the New Jersey Supreme Court and Court of Errors and Appeals, closes the courts of New Jersey to plaintiff in the enforcement of lawful contract rights as stated in the complaint and as provided by Article VIII, Section 7, of the Constitution of the State of New York, and Sections 120 and 80 of the New York Banking Law, in violation of Article IV, Section 1 of the Constitution of the United States, which provides:

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

[fol. 82] Point 5. An act of the Legislature of the State of New Jersey entitled, "A Supplement to an act entitled 'An act concerning corporations' (Revision, 1896)," P. L. 1897, Chapter 50, p. 124, Section 2, as erroneously construed and applied by the New Jersey Supreme Court and Court of Errors and Appeals, closes the courts of New Jersey to plaintiff in the enforcement of lawful contract rights as stated in the complaint and as provided by Article VIII, Section 7 of the Constitution of the State of New York, and Sections 120 and 80 of the New York Banking Law, except under conditions so burdensome as to be impossible and so expensive as to deprive the aforementioned constitutional and statutory provisions of the State of New York of full faith and credit as required by Article IV, Section 1 of the Constitution of the United States.

Point 6. The judgment of the New Jersey Court of Errors and Appeals is null and void in that it is a general judgment against the plaintiff and in favor of the named defendants, and therefore a bar to any other action in any other court of New Jersey, or any other State, and is erroneous since the statute of New Jersey above expressly referred to does not purport to go further than a prohibition against an action at law in the courts of New Jersey,

and does not justify a judgment concluding the appellant upon the merits of the cause of action.

Point 7. The judgment of the New Jersey Court of Errors and Appeals is erroneous in that it did not give full faith and credit to the public acts, record and judicial proceedings of the State of New York, within the intent and meaning of Article IV, Section 2, Paragraph 1, of the Constitution of the United States, in that the complaint in [fol. 83] above entitled action sets forth as the basis of relief public acts and judicial proceedings of the State of New York within the intent and meaning of the Constitution of the United States. Said statute of the State of New Jersey, being construed as prohibitive of said action, is void as repugnant to the section of the Constitution of the United States above referred to.

Point 8. Said statute of the State of New Jersey as construed and applied by the order and judgment of the Supreme Court, and the judgment of the Court of Errors and Appeals, is in violation of the Constitution of the United States, and particularly the Fourteenth Amendment thereof, and is therefore null and void.

Point 9. Said statute of the State of New Jersey, which would deny to the appellant any relief in the cause of action stated in the complaint, other than in the nature of an equitable accounting for the proportionate benefit of all parties interested, to which The Bank of United States and its legal representatives, and all of its creditors (aggregating over four hundred thousand in number), and all of its stockholders (aggregating over twenty thousand), shall be necessary parties, is so unreasonable and so burdensome as to be impossible of performance, by reason whereof said statute, as construed by the New Jersey Court of Errors and Appeals, deprives appellant of his property as Superintendent of Banks of the State of New York in assessments duly levied by him against stockholders of The Bank of United States resident in New Jersey, without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

[fols. 84 & 85] And the appellant further states, that the following parts of the record, as filed in this Court, need be printed by the Clerk for the hearing of the case:

1. All the papers, pleadings and judgment as printed in the State of Case in the above entitled cause before the New Jersey Court of Errors and Appeals.
2. The opinion of the New Jersey Court of Errors and Appeals.
3. The judgment of the New Jersey Court of Errors and Appeals.
4. Petition for appeal to the Supreme Court of the United States.
5. Order allowing appeal to the Supreme Court of the United States.
6. Statement of Jurisdiction.
7. Assignments of Error.

James D. Carpenter, Jr., Counsel for Appellant.

[fol. 86] [File endorsement omitted]

Endorsed on cover: File No. 39,156. New Jersey Court of Errors and Appeals. Term No. 528. Joseph A. Broderick, Superintendent of Banks of the State of New York, Appellant, vs. Mary Rosner, Essie R. Stone, Camilla Lowy et al. Filed November 15, 1934. File No. 528 O. T. 1934.